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Supreme Court of the United States

OCTOBER TERM A. D. 1929.

O'GORMAN AND YOUNG, INC., a corporation of the State of New Jersey, Appellant, vs. HARTFORD FIRE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a corporation of the State of Connecticut, Appellee.	No. [illegible]. 12
O'GORMAN AND YOUNG, INC., a corporation of the State of New Jersey, Appellant, vs. PHOENIX ASSURANCE COMPANY, LTD., OF LONDON, a corporation of Great Britain, Appellee.	No. 459. 13

ON APPEAL FROM THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES IN NEW JERSEY.

STATEMENT AS TO JURISDICTION ON APPEAL.

WALTER GORDON MERRITT,
JOHN W. SIMPSON, 2ND,
Solicitors and of Counsel for Appellants.

Supreme Court of the United States

OCTOBER TERM A. D. 1929.

O'GORMAN AND YOUNG, INC., a corporation of the State of New Jersey, Appellant, vs. HARTFORD FIRE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, a corporation of the State of Connecticut, Appellee.	No. 458.
O'GORMAN AND YOUNG, INC., a corporation of the State of New Jersey, Appellant, vs. PHOENIX ASSURANCE COMPANY, LTD., OF LONDON, a corporation of Great Britain, Appellee.	No. 459.

STATEMENT AS TO JURISDICTION ON APPEAL.

The appellant in both of the above-entitled cases, in support of the jurisdiction of this Court to review the two cases on appeal, respectfully represents:

A.

Statutory Provisions Sustaining Jurisdiction.

(a) The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 937 (United States Code, Title 28, Sec-

tion 344 [a]), which provides that Section 237 of the Judicial Code be amended to read in part as follows:

> "SEC. 344. (a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

(b) The Act of January 31, 1928, Chapter 14, 45 Stat. 54 (United States Code, Title 28, Sec. 861a), entitled "An Act in Reference to Writs of Error," which provides:

> "The writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

(c) The Act of April 26, 1928, Chapter 440, 45 Stat. 466 (United States Code, Title 28, Sec. 861b), entitled "An Act to Amend Section 2 of an Act entitled 'An Act in reference to writs of error,' approved January 31, 1928, Public, Numbered 10, Seventieth Congress," which provides:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

B.

Date of Decrees and Date of Applications for Appeal.

The final order and judgment sought to be reviewed was entered on August 25, 1929, in each case (Rec. 10 and 32).

The petition for appeal, assignment of errors, and prayer for reversal, in each case, was presented on October 16, 1929, to Honorable E. R. Walker, Chancellor and President Judge of the Court of Errors and Appeals in the Last Resort in all Causes in New Jersey, who is the highest judicial officer of said State, and were by him denied on that date (Rec. 15 and 36). Said petitions were then presented on October 18th, to the Honorable Louis D. Brandeis, Associate Justice of the Supreme Court of the United States, and were on that date by him allowed (Rec. 15-16 and 36-37).

C.

Nature of Cases and Ruling Below.

Facts as to Hartford Fire Insurance Co. Case.

Suit was brought in the Circuit Court of Essex County, New Jersey, by the appellant, a New Jersey insurance agent, to recover of the Hartford Fire Insurance Company a balance due for commissions in negotiating policies of fire insurance. The complaint alleges that appellant had, for many years, been employed by the appellee as an insurance agent in Newark, under an arrangement whereby the appellee paid and agreed to pay appellant 25 per cent. of all premiums as commissions for securing such insurance (Rec. 1); that on March 29, 1928, the contract was renewed, and that since that date the appellant has produced premiums in the aggregate amount of $2,454.61, which entitled appellant to 25 per cent. commission of $613.68, and that the services rendered *were reasonably worth that commis-*

sion; that the appellee has paid commissions of 20 per cent. for the aforesaid account, amounting to the sum of $490.92, but refuses to pay the full 25 per cent. and that, therefore, there is due to the appellant from the appellee a balance of $122.76 (Rec. 2).

The answer admits all of the allegations (except that there is money due), including those relative to the contract and those which allege that the services were reasonably worth the full 25 per cent. (Rec. 3-4), but alleges, under the head of a first separate defense, and as a sole defense, a statute of New Jersey which it asserts makes it unlawful to pay more than the 20 per cent. (Rec. 4-5). This statute, which is known as Chapter 128 of the Laws of 1928, approved March 29, 1928, provides that, in order that rates for insurance against the hazards of fire shall be reasonable, it shall be unlawful for any such insurer to pay a commission in excess of a reasonable amount to any person for acting as its agent, or for any fire insurance company to pay any compensation to a local agent in New Jersey in excess of that paid to any other of its local agents in said State (Rec. 4).

The Act further provides a penalty of $500 for every violation thereof, and in case of conviction, gives every local agent of the insurer in said State the right to recover from the insurer compensation for all such business done by it during the calendar year at the same rate as that for which the insurer was convicted and fined (Rec. 4-5).

The separate defense of the answer further alleges that the appellee has local agents in New Jersey to which it pays only 20 per cent. commission, and that by reason of said statute it is unlawful to pay the appellant the commission of 25 per cent. (Rec. 5).

Facts as to Phoenix Assurance Co. Case.

A similar suit was brought by the appellant, a New Jersey insurance agent, to recover of the Phoenix Assurance Co., Ltd., of London, a balance due for commissions in negotiating policies of fire insurance. The complaint

alleges that appellant *had a contract with the Phoenix Co. which was in full force and effect on March 29, 1928* (Rec. 16), and that said contract provided for the payment of a commission of 25 per cent. of all premiums; that pursuant to said agency contract appellant negotiated insurance, which produced premiums of the aggregate amount of $4,111.67, and entitled appellant to receive commissions of $1,027.92; that the Phoenix Assurance Co. paid the appellant a 20 per cent. commission in the sum of $822.34, leaving a balance due of $205.58 (Rec. 17).

The answer admits all of the allegations, except that there is any sum due and owing or any legal damage suffered (Rec. 20). This includes an admission of the existing contract of agency providing for a 25 per cent. commission.

In a separate defense and as a sole defense the answer sets forth the terms of the same statute of the State of New Jersey as set forth in the Hartford Co. case (Rec. 20).

Final Steps in Both Cases.

Appellant in both cases moved to strike out the answers on the ground, among others, that the statute set up in the first separate defenses was null and void (Rec. 5-6 and 22-23):

> (a) Because repugnant to Article I, Section 10, paragraph 1, of the Constitution of the United States forbidding any State to pass any law impairing the obligations of contracts; and
>
> (b) Because repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States forbidding any State to deprive any person of liberty or property without due process of law, or to deny any person within its jurisdiction the equal protection of the laws.

On the hearing of these motions, it was admitted, in open court in both cases, that the insurer was paying 20

per cent. commission to some of its agents in the State of New Jersey. After hearing, an order was entered in both cases denying the motion to strike out the separate defense, and ordering final judgment in favor of each appellee (Rec. 8 and 24).

The Circuit Court of Essex County, in an opinion in both cases, dealt expressly with the statute, and held that (1) the contract is not sufficiently shown to prove a case of unconstitutional impairment of contract, and (2) that the business of fire insurance being affected with a public interest, it is reasonable and valid to regulate commissions as provided by the statute (Rec. 25-28).

On appeal in both cases to the Court of Errors and Appeals, the orders denying the motion to strike out the answers and granting judgment in favor of the respective appellees were sustained (Rec. 10 and 32) upon the opinion of the Court below (Rec. 30).

D.

Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain the jurisdiction of these appeals in respect to the contention that the aforesaid statute of New Jersey violates Section 1 of the Fourteenth Amendment of the Constitution of the United States:

Wilson v. *New*, 243 U. S. 332;
Wolff Packing Co. v. *Industrial Court*, 262 U. S. 522;
Ribnick v. *McBride*, 277 U. S. 350;
Tyson & Bro. v. *Banton*, 273 U. S. 418;
Fairmont Creamery Co. v. *Minnesota*, 274 U. S. 1;
Niagara Fire Ins. Co. v. *Cornell*, 110 Fed. 816.

It is believed that these cases give support to the contention that (a) there is no power in the State to fix the

rate of commission paid insurance agents for their services, and (b) that if there is such a power it cannot be exercised in the arbitrary way in which this statute purports to exercise it (see *Fairmont Creamery Co.* v. *Minnesota*, *supra*).

The following decisions of this Court are believed to sustain the jurisdiction of these appeals in respect to the contention that the aforesaid statute of New Jersey violates Article I, Section 10, paragraph 1, of the Constitution of the United States, which forbids any State to pass any law impairing the obligations of contracts:

Douglas v. *Ky.*, 168 U. S. 488;
Russell v. *Sebastian*, 233 U. S. 195;
Atlantic Coast Line v. *Goldsboro*, 232 U. S. 548.

We respectfully submit that, by virtue of the premises, this Court has jurisdiction of these appeals.

Respectfully submitted,

WALTER GORDON MERRITT,
JOHN W. SIMPSON, 2ND,
Solicitors and of Counsel for Appellants.